In the Supreme Court of the United States

OCTOBER TERM, 1952

THE UNITED STATES OF AMERICA, *Appellant*

v.

THE BEACON BRASS CO., INC., and
MAURICE FEINBERG

On Appeal from the United States District Court for the District of Massachusetts

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BRIEF FOR THE UNITED STATES

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OPINION BELOW

The memorandum opinion of the District Court (R. 5-6) is not reported.

JURISDICTION

The order of the District Court dismissing the indictment was entered on January 10, 1952 (R. 5-6). The United States filed its notice of appeal to this Court on February 7, 1952 (R. 4). The

jurisdiction of this Court to review on direct appeal the order of the District Court dismissing the indictment, where such dismissal is based on a construction of the statute upon which the indictment is founded, is conferred by the Criminal Appeals Act, 18 U.S.C. 3731. See also Rule 37(a)(2), F. R. Crim. P. Probable jurisdiction was noted on April 21, 1952 (R. 14).

QUESTION PRESENTED

Whether a willful attempt to evade and defeat taxes by making false and fraudulent statements and representations to representatives of the United States Treasury Department violates Section 145(b) of The Internal Revenue Code, notwithstanding that Section 35 (A) of the Criminal Code punishes willful false statements in any matter within the jurisdiction of a department or agency of the United States.

STATUTES INVOLVED

Section 145 (b) of the Internal Revenue Code (26 U.S.C. 145(b)) provides:

> Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the pay-

ment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Section 35 (A) of the Criminal Code (18 U.S.C. (1946 ed.) 80; now 18 U.S.C. 1001) provided, in pertinent part:

> * * * whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States * * *, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

STATEMENT

On September 14, 1951, a one-count indictment was returned against the appellees, Beacon Brass Company, a corporation, and Maurice Feinberg, its president and treasurer, in the United States

District Court for the District of Massachusetts. The indictment charged that, in violation of Section 145 (b) of the Internal Revenue Code (*supra*, pp. 2-3), the appellees had willfully attempted to defeat and evade a large part of the taxes due and owing by the corporation for the fiscal period ending October 31, 1944, by making false and fraudulent statements and representations at a hearing before Treasury Department representatives on October 24, 1945, and on other occasions thereafter, concerning payments and disbursements made by the corporation, for the purpose of concealing additional unreported corporate net income on which a tax of approximately $134,910.68 was due and owing (R. 2). On motion of the appellees (R. 3), the District Court dismissed the indictment (R. 5-6).[1]

The dismissal of the indictment was based upon the District Court's holding that the conduct alleged in the indictment "is not such an act as was contemplated" by Section 145 (b) of the Internal Revenue Code (R. 6). This holding was required, the court reasoned, because Section

[1] The district court proceedings in this case, which was docketed as Criminal No. 51-288 in the court below, appear in the printed record before this Court at pp. 1-7, 13-14. Pursuant to designation by the appellees (R. 7, 14), the entire record relating to their previous indictment in Criminal No. 51-55 in the court below has been transmitted to this Court and appears in the printed record at pp. 7-12. The Government considers these latter materials unnecessary for consideration of the points relied upon (R. 13).

35 (A) of the Criminal Code (18 U.S.C. (1946 ed.) 80; now 18 U.S.C. 1001)[2] made it an offense willfully to make false statements or representations in any matter within the jurisdiction of any department or agency of the United States. Although conceding that Section 145 (b) of the Internal Revenue Code contemplates that many methods can be used to accomplish the crime of tax evasion, the District Court thought that Section 35 (A) of the Criminal Code "deals specifically with a situation such as is presented here" and that, therefore, "Congress must be presumed to have intended that making false statements should be punished thereunder." (R. 6.)[3]

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In holding that the indictment does not charge an offense under Section 145(b) of the Internal Revenue Code.

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[2] Section 35 (A) of the Criminal Code was repealed by Section 21 of the Act of June 25, 1948, c. 645, 62 Stat. 683, 862, which codified into positive law Title 18 of the United States Code. The substance of Section 35 (A) now appears in 18 U.S.C. 1001, but we shall refer here to the former provision since it was in effect at the time of the events giving rise to this prosecution.

[3] The six-year statute of limitations (26 U.S.C. 3748(a)(2)) applicable to offenses under Section 145(b) of the Internal Revenue Code had not run when the indictment was returned, but the indictment showed on its face that the three-year limitation period (18 U.S.C. 3282) applicable to Section 35 (A) of the Criminal Code had expired.

2. In holding that the making of false statements such as those alleged in the indictment can be punished only under Section 35 (A) of the Criminal Code.

3. In granting the motion to dismiss the indictment.

SUMMARY OF ARGUMENT

A. The broad language of Section 145(b) of the Internal Revenue Code, imposing criminal sanctions upon "any person who willfully attempts in any manner to evade or defeat" any income tax, plainly reaches attempts to evade or defeat by means of false statements. Misrepresentation or concealment is ordinarily the essence of the offense, and false statements are the most common and obvious means to such criminal ends. Recognizing these simple realities, the courts of appeals have uniformly held that a willful attempted evasion by means of false statements in a tax return constitutes an offense within Section 145(b). And this conclusion has at least twice been implicit in decisions of this Court.

If the uniform holdings that false written statements may be used to violate Section 145(b) are correct, the same rule necessarily applies to false oral statements. There is no basis in the statutory language for distinguishing the two, and the holding of the District Court in this case applies equally to both.

B. Because Section 35(A) of the Criminal Code forbade false statements "in any matter within the jurisdiction of any department or agency of the United States," the District Court concluded that false statements willfully made for the purpose of evading taxes could not be punished under Section 145(b) of the Internal Revenue Code. This reasoning is fallacious. It affords no basis for excluding from the coverage of Section 145(b) conduct to which the statutory terms plainly apply.

It commonly happens that a single act or transaction offends against two criminal statutes. But, at least where the statutes define distinct offenses in the sense that there are differences in the proof they require for conviction, they remain fully effective in accordance with their terms. In such circumstances, neither statute is to be regarded as having been repealed by implication and there is no presumption favoring a restrictive interpretation of either to eliminate cases where both may apply.

These settled principles control here. Section 145(b) strikes at willfully attempted tax evasion while Section 35(A) is directed to false statements in general. The fact that a particular false statement made in an attempt to evade taxes may be punishable under Section 35(A) is no ground for denying that such a statement falls within the broad prohibition of Section 145(b) against attempts to evade taxes "in any manner."

The District Court's error is vividly demonstrated by decisions rejecting the argument that Section 145(b) repealed by implication Section 35(A) or other statutes punishing false statements. These decisions accept without question the obvious proposition that false statements made with intent to evade taxes may offend against both Section 145(b) and other statutes punishing false statements as such. They show that this coincidence is neither uncommon nor improper and that it affords no ground for judicial redefinition of any of the distinct offenses Congress has proscribed.

ARGUMENT

Section 145(b) of the Internal Revenue Code Embraces Willful Attempts to Evade or Defeat Taxes by Making False and Fraudulent Statements and Representations to Representatives of the Treasury Department, Notwithstanding That Section 35(A) of the Criminal Code Forbids Willful False Statements in Any Matter Within the Jurisdiction of a Department or Agency of the United States

A. The Plain Language of Section 145(b), as Uniformly Construed by the Courts, Reaches Attempts to Evade or Defeat by False Statements

In sweeping terms, Section 145(b) of the Internal Revenue Code (*supra*, pp. 2-3) denounces as a felon "any person who willfully attempts *in any manner* to evade or defeat any tax imposed" by the income tax provisions. (Emphasis added.) Examining the "comprehensive violation" (*United States* v. *Johnson*, 319 U. S. 503, 515)

against which this language is directed, this Court said (in *Spies* v. *United States,* 317 U. S. 492, 499):

> Congress did not define or limit the methods by which a willful attempt to defeat and evade might be accomplished and perhaps did not define lest its effort to do so result in some unexpected limitation. Nor would we by definition constrict the scope of the Congressional provision that it may be accomplished "in any manner." By way of illustration, and not by way of limitation, we would think affirmative willful attempt may be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, *and any conduct, the likely effect of which would be to mislead or to conceal.* If the tax-evasion motive plays any part in such conduct the offense may be made out * * *. [Emphasis added.]

The language of Section 145(b), on its face and as thus construed, is plainly broad enough to encompass false statements and representations wilfully made to Treasury representatives for the

purpose of evading or defeating the payment of a tax.

In a tax-collecting system which, despite recent importation of the withholding device, continues to rely "largely upon the taxpayer's own disclosures" (*Spies* v. *United States, supra,* at 495; see also *United States* v. *Murdock,* 290 U. S. 389, 395-396), the most obvious "manner" in which evasion or defeat is likely to be attempted is false statement to the Treasury of the facts upon which the tax is based. Cf. *Rick* v. *United States,* 161 F. 2d 897, 898 (C. A. D. C.). This plain fact is highlighted in this Court's *Spies* opinion by the examples given (*supra,* p. 9), "[b]y way of illustration, and not by way of limitation," to show the varieties of conduct from which a violation of Section 145(b) might be inferred. Ultimately, in each of these illustrations, the essence of the wrongful attempt lies in misrepresentations of fact to the taxing officials. Thus, "keeping a double set of books, making false entries or alterations, or false invoices or documents" would not fall under Section 145(b) were their purpose anything other than "to mislead or to conceal." Such books or entries or documents become important precisely because they are employed, in the language of the indictment now before the Court (R. 2), as "false and fraudulent statements and representations * * * [to] representatives and employees of the United States Treasury Depart-

ment * * *." Cf. *Steinberg* v. *United States*, 14 F. 2d 564, 567 (C. A. 2).

Recognizing that false statements to Treasury representatives constitute the likeliest and most direct means of violation, the courts of appeals in practically every circuit have held that Section 145(b) covers willful attempts to evade and defeat taxes by the filing of false returns—*i. e.*, by the making of false statements in writing. *Guzik* v. *United States*, 54 F. 2d 618 (C. A. 7), certiorari denied, 285 U. S. 545; *United States* v. *Schenck*, 126 F. 2d 702 (C. A. 2), certiorari denied, *sub nom. Moskowitz* v. *United States*, 316 U. S. 705; *Rose* v. *United States*, 128 F. 2d 622 (C. A. 10), certiorari denied, 317 U. S. 651; *Cave* v. *United States*, 159 F. 2d 464 (C. A. 8), certiorari denied, 331 U. S. 847; *Barrow* v. *United States*, 171 F. 2d 286 (C. A. 5); *Emmich* v. *United States*, 298 Fed. 5, 9 (C. A. 6); *Myres* v. *United States*, 174 F. 2d 329 (C. A. 8), certiorari denied, 338 U. S. 849; *United States* v. *Croessant*, 178 F. 2d 96 (C. A. 3), certiorari denied, 339 U. S. 927; *Taylor* v. *United States*, 179 F. 2d 640 (C. A. 9);[4] *Gaunt* v.

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[4] In *Taylor* v. *United States*, *supra*, reversal of a conviction under Section 145(b) was sought on the ground that "26 U. S. C. A. § 3616, (which makes it a misdemeanor to deliver or disclose to the collector 'any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made * * *') repealed by implication § 145(b) insofar as the latter section might be construed to prohibit the evasion of income

United States, 184 F. 2d 284 (C. A. 1), certiorari denied, 340 U. S. 917. And while the narrow question now presented has never been before this Court in the exact form it takes here, prior decisions of the Court have implicitly held that false statements in a return could be one of the many ways of making the attempt at evasion proscribed by Section 145(b).[5]

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taxes by filing false returns." Disposing of this contention (179 F. 2d at 643-644), the Court said:

> The legislative history of the two sections reveals that § 3616 was originally enacted long prior to the enactment of § 145(b). [§ 3616 was derived from R. S. § 3179, which revised Section 15 of the Act of June 30, 1864, 13 Stat. 218, 227, and thus antedates by a considerable period the income tax provisions to which § 145 relates.] It goes without saying that an existing statute cannot repeal, by implication or otherwise, a subsequent enactment. Both of these sections were re-enacted in the 1939 general codification of the Internal Revenue Code, 53 Stat. 62, 440. We further note that the penalties provided in § 145(b) are made expressly "in addition to other penalties provided by law."

[5] In the *Spies* case, this Court held that the willful attempt to evade declared in Section 145(b) to be a felony could not be established merely by proof of the willful omissions to file a return and pay a tax, both of which are made misdemeanors under Section 145(a). In the light of this gradation of offenses, the Court concluded that conviction under Section 145 (b) required "some willful commission in addition to the willful omissions that make up the list of misdemeanors." 317 U.S. at 499. In a case like the one here, the test of "affirmative willful attempt" (*ibid.*) is clearly met. Pointing out the obvious distinction between the affirmatively wrongful filing of a return containing false statements and the failure to file any return, the courts of appeals have uniformly construed the *Spies* decision as leaving intact the

United States v. *Troy*, 293 U. S. 58, construing a predecessor statute (Revenue Act of 1928, Sec. 146(b), 45 Stat. 791, 835) identical to the present Section 145(b), held (at p. 62) that in an indictment charging—

> willful effort to defeat the tax by presenting a false return no allegation of duty to make the return was necessary. *The alleged act sufficiently indicated appellee's criminal intent.* Certainly we can find no legislative purpose to exempt from punishment one who actively endeavors to defeat a tax. [Emphasis added.]

In *United States* v. *Noveck*, 273 U. S. 202, in a more common variant of the argument appellees have made here, the taxpayer urged that the provision punishing willful attempts "in any manner" to evade or defeat taxes[6] was so comprehensive that it had to be construed as impliedly

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settled rule that the felony under Section 145 (b) may be committed by filing a false return. *Cave* v. *United States*, 159 F. 2d 464, 466-467 (C.A. 8), certiorari denied, 331 U.S. 847; *Myres* v. *United States*, 174 F. 2d 329, 334 (C.A. 8), certiorari denied, 338 U.S. 849; *United States* v. *Croessant*, 178 F. 2d 96, 97-98 (C.A. 3), certiorari denied, 339 U.S. 927. *Gaunt* v. *United States*, 184 F. 2d 284, 288 (C.A. 1), 340 U.S. 917. This conclusion is at least equally applicable where, as here, evasion is attempted by false oral statements.

[6] The statute there involved (Revenue Act of 1921, Sec. 253, 42 Stat. 227, 268) contained the pertinent language now found in Section 145(b), but made it a misdemeanor rather than a felony willfully to attempt "in any manner to defeat or evade the tax * * *."

repealing, as to false returns, the general perjury statute. Rejecting this argument, the Court said (273 U. S. at 206-207):

> The crime of attempting to defeat or evade the Revenue Law may be committed without verification of a false tax return. * * * Congress, having power to make both the false swearing and the use of the false affidavit punishable, * * * did so.

We submit, in short, that the long course of judicial decision, uniformly following the plain mandate of the language Congress has repeatedly reenacted,[7] leaves no doubt that false statements

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[7] Under Section 38 Eighth of the Corporation Excise Tax Act of 1909 (36 Stat. 11, 117) and Section II F of the Income Tax Act of 1913 (38 Stat. 114, 171), it was an offense to make "any false or fraudulent return, or statement, with intent to defeat or evade the assessment * * *." Similar provisions appeared in Section 18 of the Revenue Act of 1916 (39 Stat. 756, 775) and Section 1209 of the Revenue Act of 1917 (40 Stat. 300, 336). Section 253 of the Revenue Act of 1918 (40 Stat. 1057, 1085), introducing the language now found in Section 145(b), declared that anyone "who willfully attempts in any manner to defeat or evade the [income] tax imposed by this title, shall be guilty of a misdemeanor * * *." See also Section 1308(b) of the same Act, 40 Stat. 1143. This misdemeanor provision was reenacted in the Revenue Act of 1921, Section 253 (42 Stat. 227, 268).

In 1924, the felony provision was enacted as Section 1017(b) of the Revenue Act of 1924 (43 Stat. 253, 344) in the language now found in Section 145(b) of the Code, and was carried forward in subsequent Revenue Acts and into the Code. 44 Stat. 9, 116; 45 Stat. 791, 835; 47 Stat. 169, 217; 48 Stat. 680, 725; 49 Stat. 1648, 1703; 52 Stat. 447, 513; 53 Stat. 1, 63.

made in a willful attempt to evade or defeat taxes violate Section 145(b). While the cases have commonly involved false *written* statements—usually in a return—the statutory language is equally applicable to false oral statements made to Treasury agents for the same unlawful purpose. Cf. *United States* v. *Johnson*, 319 U. S. 503, 518.[8] For the problem in every case is whether the conduct charged is such that its "likely effect * * * would be to mislead or to conceal" (*Spies, supra*, at 499), and oral misrepresentations made to Treasury agents with intent to conceal income are obviously as eligible for this description as fraudulent writings.

B. The Fact That Appellees' Conduct May Have Violated Section 35(A) of the Criminal Code Is No Bar to Their Prosecution for the Distinct Offense Under Section 145(b) of the Internal Revenue Code

Apparently recognizing (R. 6) that the broad proscription in Section 145(b) against attempted evasion "in any manner" appears on its face to include attempted evasion by false statements, the District Court nevertheless held that the language must be read as if it said "in any manner, except

[8] The cited passage in the *Johnson* opinion makes it clear that "conduct, acts and admissions," which is designed to aid in the concealment perpetrated by a false return may be found to violate Section 145(b) even where the defendant plays no part in the actual making of the return. Included in the evidence there found sufficient to sustain convictions was proof of false statements to Government agents. See Brief for the United States on Reargument, Oct. T. 1942, Nos. 4 and 5, pp. 72-75.

by means of false statements." Because Section 35(A) of the Criminal Code (18 U. S. C. (1946 ed.) 80, now 18 U. S. C. 1001; *supra*, p. 3) forbade false statements "in any matter within the jurisdiction of any department or agency of the United States," the court reasoned, "Congress must be presumed to have intended that making false statements should be punished thereunder." If this "presumption" were warranted, it would of course apply to written as well as oral false statements, for both are encompassed by Section 35(A). See, *e. g., United States* v. *Gilliland*, 312 U. S. 86. It would mean that a false return employed as a method of willfully attempting to evade taxes could not be punished under Section 145(b), contrary to the consistent holdings of the courts of appeals and the implicit premise of at least two of this Court's prior decisions (see pp. 11-14, *supra*). It would mean, more broadly, that—since misrepresentation is in almost every conceivable case the essence of the offense under Section 145(b) (*supra*, pp. 10-11), and since misrepresentations to Government agents fall within the general provisions of Section 35(A)—the comprehensive language Congress chose in Section 145(b), apparently to avoid any "unexpected limitation" (*Spies, supra*, at 499), would be limited almost to the point of nullification.

But there is neither reason nor authority for the construction adopted by the court below. Every

relevant consideration requires that Section 145(b) be read to mean what it says—that the outlawed attempts may be committed "in any manner." The plain statutory terms, clearly encompassing the method of attempted evasion charged in the present indictment, neither require nor permit exclusion of any particular method because it may happen to be in itself a violation of another statute.

It has long been recognized that a single act or transaction may violate two or more criminal statutes. *E. g., United States* v. *Noveck*, 273 U. S. 202, 206 (perjury and willful attempt to evade taxes), *Carter* v. *McClaughry*, 183 U. S. 365, 395 (conspiracy to defraud and conduct unbecoming an officer under Articles of War); *Gavieres* v. *United States*, 220 U. S. 388 (being drunk, rude, or indecent in public and insulting or threatening a public officer). Where two such statutes define different offenses—*i. e.*, where the facts necessary to conviction under one differ from the facts necessary under the other—there is no occasion for concluding that an implied repeal has been effected or that the plain meaning of either one must be so restricted as to prevent their overlapping. "The two can exist and be useful, side by side." *Edwards* v. *United States*, 312 U. S. 473, 484. See also *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 457; *United States* v. *Gilliland*, 312 U. S. 86, 95-96; *United States* v. *Borden Co.*,

308 U. S. 188, 198; *United States* v. *Noveck, supra; Albrecht* v. *United States*, 273 U. S. 1, 11-12.

These settled principles control here. Directed to the problem of tax evasion, Section 145(b) clearly defines an offense distinct from the general crime of false statements punished by Section 35(A) of the Criminal Code. The crucial fact requiring proof for conviction under the former is a willful effort to evade or defeat taxes—an element which plays no part in Section 35(A). Conversely, a false statement punishable under the latter statute is not essential to conviction for attempted tax evasion, although, as we have pointed out, such a statement is probably the most common device for the commission of this crime. While the District Court emphasized the "distinctness of the two offenses" (R. 6), this factor serves to refute rather than to support its conclusion.[9] For, being distinct, each of the statutes

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[9] The difference in punishments, to which the District Court referred as pointing up the distinctiveness of the two statutes, has been eliminated. See note 10, *infra*. There remains, in addition to the crucial tax evasion element which is required only under Section 145(b), the difference in limitations provisions which makes it necessary that the present indictment be predicated upon this section. For the offense of attempted tax evasion accomplished "in any manner," Congress has specially provided a six-year period for prosecution. 26 U. S. C. 3748 (a) (2). For the general crime of false statements, the general three-year period applies. 18 U. S. C. 3282. And this difference, we believe, helps to point up the District Court's error. For, in singling

is to be enforced as it was written. The crippling construction adopted by the court below, in the teeth of the plain congressional language and the uniform judicial precedents, finds no justification in the erroneously assumed need to prevent application of Section 145(b) in situations where Section 35(A) could also apply.

The District Court's error is made particularly clear by four decisions, one by this Court and three by the courts of appeals, which have rejected arguments built on essentially the same error. *United States* v. *Noveck, supra; Levin* v. *United States*, 5 F. 2d 598 (C. A. 9), certiorari denied, 269 U. S. 562; *Steinberg* v. *United States*, 14 F. 2d 564 (C. A. 2); *Capone* v. *United States*, 51 F. 2d 609 (C. A. 7), certiorari denied, 284 U. S. 669. In these cases, involving identical predecessors of Section 145(b), it was variously contended that the statute punishing willful attempts in any manner to evade taxes (1) repealed by implication the general perjury statute insofar as that statute would otherwise have applied to a false tax return made under oath; (2) at least, prevented convictions

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out attempted tax evasion as requiring a longer limitations period, Congress has emphasized the specific treatment of this crime and of the varieties of conduct it encompasses. The District Court, on the other hand, has viewed a false statement made to evade taxes simply as one of the general class of false statements in government matters, ignoring the central problem of tax evasion, and—in a conclusion which does not follow from, but may be related to, this initial error—has decided that attempted evasion through false statements cannot be reached under Section 145(b) at all.

for both perjury and attempted evasion based on the making and filing of a false return; or (3) repealed by implication Section 35(A) of the Criminal Code as applied to false tax returns.[10] The decisions rejecting these arguments are plainly apposite here. They are significant for their unhesitating acceptance of what is, after all, the decisive point here—that Section 145(b) unmistakably reaches attempted evasion by false statements, even though the making of such state-

[10] The District Court does not appear in this case to have suggested that Section 35(A) of the Criminal Code should be read as having repealed Section 145(b) of the Internal Revenue Code by implication. As shown by the decisions under discussion, the chronology of the two provisions requires that this strongly disfavored argument be attempted the other way. The predecessors of Section 145(b), denouncing attempted evasion "in any manner," began with the Revenue Act of 1918 (approved February 24, 1919), and did not provide for punishment as a felony until 1924. See note 7, *supra*. On the other hand, Section 35(A), insofar as it is material here, reached its present form in the Act of October 23, 1918, 40 Stat. 1015. While it does not affect the problem of construction involved here, the fact that, until 1924, the provision which is now Section 145(b) of the Internal Revenue Code punished attempted evasion as a misdemeanor makes obvious the practical reason for the argument that it had repealed the perjury statute by implication. A similar situation existed with respect to Section 35(A) of the Criminal Code which, until the revision of Title 18 in 1948, provided for a maximum of ten years' imprisonment as compared with the maximum of five years under Section 145(b). In the revision, 18 U. S. C. 287 and 1001, into which the former Section 35(A) was divided, were assigned the same five-year and $10,000 maximum penalties as those contained in Section 145(b).

ments is also punishable under another provision. See pp. 12-14, *supra*. They refute the fallacy underlying the District Court's belief that, because false statements are punishable as such, the Congress must be supposed to have excluded them by an unwritten proviso when it outlawed attempts to evade taxes "in any manner."[11] The fact that the method of attempted evasion in this case appears to have transgressed Section 35(A) as well as Section 145(b) would probably preclude a cumulation of punishments under both provisions. See *Capone* v. *United States, supra,* at 615; *Gaunt* v. *United States,* 184 F. 2d 284, 289-290 (C. A. 1), certiorari denied, 340 U. S. 917. But this circumstance affords no ground for the conclusion that courts should or may "by definition constrict the scope of the Congressional provision that [a willful attempt to defeat and evade] may be accomplished 'in any manner.'" *Spies* v. *United States, supra,* at 499.

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[11] The apparent assumption of the District Court that false statements should be held to be punishable only under Section 35(A) is belied by the numerous instances in which Congress has expressly provided for criminal sanctions against false statements in particular contexts. See, *e. g.*, for a small sampling of such provisions, originally enacted in connection with particular legislative programs, 18 U. S. C. 1003, 1007, 1008, 1010-1012, 1014, 1015. See also *Bartlett* v. *United States,* 166 F. 2d 920 (C. A. 10), rejecting the argument that Section 205(b) of the Emergency Price Control Act of 1942 (56 Stat. 33), punishing false statements in price control matters, superseded Section 35(A) of the Criminal Code.

CONCLUSION

For the reasons stated, the judgment of the District Court dismissing the indictment should be reversed.

Respectfully submitted,

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